IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WA.No. 2924 of 2007
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AGAINST THE ORDER IN WPC.35016/2007 DATED 27/11/2007
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APPELLANT/3RD RESPONDENT
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ABDUL RAHIMAN,
KALATHUR, SECRETARY, KALATHUR SUNNI CENTRE,
KASARAGOD TALUK, P.O.ICHALAMPADY, VIA. KUMBLA.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.

RESPONDENTS/ PETITIONER & RES. 1,2 & 4
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1. SHITHARAMA ALVA,
S/O. NANHAPPA ALVA,
MANAGING TRUSTEE OF SRI. KIDOOR MAHADEVA TEMPLE,
KIDOOR VILLAGE, KASARAGOD TALUK, P.O.ICHALAMPADY.

2. THE PRESIDENT,
PUTHIGE GRAMA PANCHAYAT, PUTHIGE, KASARAGOD TALUK,
P.O.PUTHIGE.

3. THE SECRETARY,
PUTHIGE GRAMA PANCHAYAT, PUTHIGE,
KASARAGOD TALUK, P.O.PUTHIGE.

4. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM,
P.O.THIRUVANANTHAPURAM.

R1 BY ADV. SHRI K.G. GOWRI SHANKER RAI
GOVERNMENT PLEADER (SHRI M.P. SREEKRISHNAN)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L. DATTU, CJ. & K. M. JOSEPH, J.**

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**W.A. NO. 2924 OF 2007**

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**Dated this the 11th December , 2007**

**JUDGMENT**

**H.L. DATTU, CJ.**

This Writ Appeal arises out of the Order passed by the learned Single Judge in W.P.(C). No.35016/07 dated 27.11.2007. By the impugned Order, the learned Single Judge has granted permission to the petitioner in the Writ Petition to complete the work as permitted in Ext.P1 (permission granted by the Village Panchayat).

2. Petitioner before the learned Single Judge is the Managing Trustee of Sree Mahadeva Temple, Kidoor. Prior permission was sought before the Panchayat Authorities for putting up an Arch in front of the road leading to the Temple. It appears, the distance from the Arch and the Temple is about 1.5 K.Ms.

3. For putting up the Arch, the Village Panchayat had granted permission to the petitioner who is the Managing Trustee of the Temple.

4. The appellant before us had called in question the permission that was granted by the Village Panchayat to the petitioner for constructing the Arch, before the Tribunal for Local Self Government Institutions (for short, "the Tribunal").

5. The Tribunal by Ext.P2 Order dated 3.10.2007 has set aside the permission granted by the Village Panchayat for putting up the Arch in front of the Temple. Aggrieved by the order passed by the Tribunal, the petitioner has presented the writ petition and in that has sought for the following reliefs:-

> *"A. Call for the records and to quash Ext.P2 order passed by the Tribunal and restore Ext.P1 permit granted by the Village Panchayat.*
>
> *B. Issue an interim direction permitting the petitioner to proceed with the construction as per Ext.P1 permission granted by the Village Panchayat."*

6. By way of an interim prayer, the petitioner has requested this Court to permit the petitioner to complete the construction as per the permission granted by the Village Panchayat.

7. The learned Single Judge while entertaining the Writ Petition and without hearing the contesting respondent has proceeded to grant the interim prayer sought for by the petitioner. The Order passed by the learned Single Judge is as under:

> *"Notice to R4 dispensed with. Consolidated notice to R1 & R2. Notice to R3.* ***There will be an interim order as prayed for."***
> (emphasis supplied by us)

8. Aggrieved by the interim order so passed, the third respondent in the Writ Petition has presented this Writ Appeal.

9. In the normal course, we would have directed the appellant/third respondent, to make an appropriate application before the learned Single Judge for modification/vacating the interim order. But, keeping in view the urgency of the matter, we have heard the learned counsel appearing for the appellant as well as the contesting respondent.

10. Briefly put, the facts are as follows:

The Village Panchayat granted permission to the petitioner who is the Managing Trustee of the Sree Mahadeva Temple, Kidoor for putting up an Arch in front of the road leading to the Temple. Aggrieved by the permission so granted, the contesting respondent, namely the third respondent in the Writ Petition, has approached the Tribunal. The Tribunal has allowed the third respondent's Appeal and thereby has set aside the permission granted by the Village Panchayat. It is this order which is called in question in the Writ Petition.

11. As of now, the petitioner in the writ petition does not have the permission of the competent authority to put up any construction, much less the

construction of the Arch.

12. The learned Single Judge, while entertaining the Writ Petition, has granted the interim prayer and thereby the main relief sought in the writ petition itself. Normally this Court grants the interim relief in the aid of the main relief and in the name of interim relief it does not grant the main relief itself that too, without hearing the contesting respondents.

13. Even otherwise also, the petitioner who is the Managing Trustee of the Temple, as of now, does not have the permission granted by the competent authority. The learned Single Judge could not have granted permission to the petitioner to put up the Arch, in the absence of appropriate permission from the competent authority. On this score also, the order passed by the learned Single Judge cannot be sustained by us.

13. Accordingly, we pass the following:

**Order**

1) The Writ Appeal is allowed.

2) The interim order passed by the learned Single Judge is set aside.

3) We only request the learned Single Judge to hear the matter as early as possible and dispose of the same on merits, if such a request is made by any of the parties.

**H.L. DATTU,**
**CHIEF JUSTICE**

**K.M. JOSEPH,**
**JUDGE**

**kbk/dk.**